

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Nicholas Martin,  
Correctional Police Officer (S9988A),  
Department of Corrections

List Removal Appeal

CSC Docket No. 2020-2473

ISSUED: APRIL 12, 2021 (EG)

Nicholas Martin, represented by Katherine D. Hartman, Esq., appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list due to an unsatisfactory employment record and falsification of his pre-employment application.

The subject eligible list was promulgated on June 27, 2019 and expires on June 26, 2021. In disposing of the certification, the appointing authority requested that the appellant's name be removed from the subject eligible list an unsatisfactory employment record and falsification of his pre-employment application. Specifically, it asserted that the appellant had multiple infractions from his employer which included inefficiency, carelessness, and substandard work. Further, it contends that the appellant failed to disclose multiple contacts with the Lawrenceville Township Police Department on his preemployment application.

On appeal, the appellant asserts that he gathered the required documentation and completed the preemployment application as best he could. The appellant argues that he provided all the information regarding his contacts with the Lawrenceville Township Police Department during a prior home interview and states that he submitted copies of Lawrenceville Township police records and a records request from the Lawrenceville Township Police Department. With regard to his employment with Lawrenceville Township, the appellant indicates that he had received four disciplinary actions including a five-day suspension in 2019 since he began employment in June 2017. The appellant argues that his supervisor during those incidents was a person he knew from working elsewhere, who had it in for him. He asserts that when he was transferred to a new supervisor, he had no further disciplinary actions. Additionally, he states that he resigned from Lawrenceville Township in April 2020 to pursue a more lucrative position with a prior employer.

Further, the appellant argues that he listed seven previous employers with whom he had no issues and that his experience with Lawrenceville Township should not give him an unsatisfactory employment history.

In response, the appointing authority reiterates that the appellant's unsatisfactory employment history and the falsification of his preemployment application, and argues that he is not a suitable candidate for Correctional Police Officer. In support of its contentions, the appointing authority asserts that the appellant was written up on at least three separate occasions by Lawrenceville Township during his employment from 2017 through the present for inefficiency, carelessness, and substandard work. Further, the appellant answered no to question number 49 "Have you ever been involved in a personal relationship in which you threatened, assaulted or harassed another party?" It asserts that the appellant had a Temporary Restraining Order (TRO) placed on him in 2015 which has since been dismissed. The appellant also answered no to question number 52 which asked, "Have you ever had any police contact, been taken into custody, or charged with a juvenile delinquency?" The appointing authority argues that the fact that he had a TRO demonstrates that he falsified his answer to that question. It also noted that the appellant had multiple police contacts that were included in the Lawrenceville Township Police Department records he submitted. Moreover, the appointing authority states that it strives to select candidates who exhibit a good work ethic and respect for the law as this is imperative to effectively manage the day-to-day operations of a correctional system, and argues that the appellant is not a suitable candidate.

In reply, the appellant argues that the preemployment application did not define the term police contact. He argues that his contacts with the police department were minimal and none were for criminal charges, and as such were easy to overlook or determine that they were irrelevant to include in his application. In this regard, the contacts included looking for a lost phone, reporting a suspicious vehicle, reporting a hit-and-run incident and the police responding to a smoke alarm. One incident involved a verbal altercation with his father in which the police was called but no charges were filed. Other contacts were for an abandoned 911 call, an accident involving an overturned mulch truck and a traffic stop for tinted windows. The appellant argues that he answered the questions the way he believed was appropriate and in no way tried to mislead the appointing authority. Additionally, the appellant contends that the TRO was obtained *ex parte* and that he denied ever threatening, harassing or assaulting another individual. He successfully defended himself and the TRO was dismissed. Thus, he claims he answered question number 49 truthfully. He also asserts that he clearly was not trying to hide the incident as he attached the dismissed TRO to his preemployment application. Finally, the appellant asserts that Lawrenceville Township Public Works has a reputation for treating employees poorly and that at least 10 employees have resigned in the past year because of a difficult and unreasonable working environment. The appellant adds that the union contract

with Lawrenceville Township Public Works did not allow him to contest a written reprimand.

## CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. Additionally, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an individual from an eligible list who has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. Further, *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error. Moreover, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

In the instant matter, the appellant's name was removed from the eligible list for falsification and an unsatisfactory employment history. The appointing authority asserts that the appellant falsified his preemployment application by answering o to questions 49 and 52 regarding any threatening, assaulting or harassing in personal relationship, and police contacts. The Civil Service Commission (Commission) does not agree. Although the appellant did not list his TRO and all his police contacts in response to questions 49 and 52, he did submit copies of all his police contacts and a copy of the dismissal of his TRO. Furthermore, the nature of the appellant's police contacts does not appear to be material facts at the time a preemployment application was completed and do not support the removal of his name from the eligible list. *See In the Matter of Julio Rivera* (MSB, decided February 11, 2004) (Eligible name restored to list who neglected to disclose that he was suspended from school for two or three days when he was 12 years old); *See also, In the Matter of Daniel Labazzo* (MSB, decided September 25, 2002); *In the Matter of Marlon Chiles* (MSB, decided September 6, 2006). Therefore, the Commission finds that the appellant did not attempt any deception or fraud.

Further, the appellant's employment history reveals several reprimands and a five-day suspension from Lawrenceville Township. In reviewing this matter, the Commission recognizes that a Correctional Police Officer is a law enforcement employee who must help keep order in correctional facilities and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an

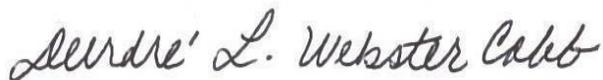
applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965, cert. denied, 47 N.J. 80 (1966)); *See also In re Phillips*, 117 N.J. 567 (1990). The public expects prison guards to present a background that exhibits respect for the law and rules. The Correctional Police Officer position is reserved for employees who exhibit leadership skills, a positive work ethic, and respect for the rules and regulations. Nevertheless, in this particular matter, the Commission finds that the appointing authority has not presented a sufficient basis to find that the appellant's prior employment history presents cause for concern that he will disrupt the efficient day-to-day operations of the correctional facility. A couple of written reprimands and one minor disciplinary action are insufficient to determine that an appellant's employment history is unsatisfactory. Therefore, based on the foregoing, the Commission finds that the appointing authority has failed to show sufficient justification for removing the appellant's name from the Correctional Police Officer (S9988A), Department of Corrections eligible list.

### ORDER

Therefore, it is ordered that the appellant's appeal of the removal of his name from the list for Correctional Police Officer (S9988A), Department of Corrections be granted, and that the appellant's name may be certified at the time of the next certification, for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>TH</sup> DAY OF APRIL, 2021



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Nicholas Martin  
Katherine D. Hartman, Esq.  
Veronica Tingle  
Division of Agency Services